

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2165

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2165

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2165

Senate Natural Resources Committee

Conference Committee

Hearing Date January 17, 2005

Tape Number	Side A	Side B	Meter #
1		X	6.9 - 44.5
Committee Clerk Signature <i>Jant James</i>			

Minutes:

**Senator Duane Mutch**, Chairman of the Senate Industry, Business and Labor Committee opened the hearing on SB 2165 relating to the unauthorized use of the name or logo of a bank, trust company, savings association, savings bank, or affiliated entity; and to provide a penalty.

All Committee members were present.

**Marilyn Foss** representing the North Dakota Banker's Association testified in support of SB 2165 (See attached testimony). She presented a copy of a letter of solicitation and discussion was held in regard to how names are acquired from recorded mortgage transactions and how loans are refinanced under false pretenses.

**Tim Karsky**, Commissioner for the North Dakota Department of Financial Institutes testified to be on record in support of SB 2165.

**Don Fonsberg**, the Executive Vice President of the Independent Community Bank in North Dakota testified to be on record in support of SB 2165.

Page 2

Senate Natural Resources Committee

Bill/Resolution Number SB 2165

Hearing Date 1-17-05

**Senator Mutch** asked for opposing testimony of SB 2165.

**Glen Elloitt** a resident of Mandan, North Dakota testified in opposition to SB 2165 in its present form, on his on behalf. He thinks the bill is wider afield than it needs to be. His objection is that if the bank only wants to direct this only at marketing their customers, than the language needs to narrowed to state "towards customers". Otherwise the language gets into Chapters 22 and 25 under Title 47 regarding trademarks and trade names.

Discussion was held as to the use of Internet domain names and the possibility of use of similar name in several states and the possibility of litigation. Damage fees for misuse of bank names was also discussed

**Clara Jenkins** (34.4), the Business Division Director of the Secretary of State's Office testified on SB 2165 only to supply information. She sees no relationship of SB 2165 to the provisions of Title 47-25. Bank names are not trade names that are their corporate names protected under the banking code and the Business Corporation Act (Chapter 10-19.1).

**Senator Klein** asked for confirmation that SB 2165 addresses the problem brought forth by the banks and does not go against Title 47-25.

**Clara Jenkins** confirmed such as of this time.

**Senator Dave Nething** questioned the need of written permission to be able to use the bank's name.

**Senator April Fairfield** asked if this might be more boardly applied to other entities such as hospitals.

**Clara Jenkins** is not aware of others.

Hearing no other testimony **Senator Mutch** closed the hearing on SB 2165.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2165

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-26-05

Tape Number	Side A	Side B	Meter #
2		xxx	5243-end

Committee Clerk Signature *Lisa VanBerkom*

Minutes: **Chairman Mutch** opened committee discussion on SB 2165. All Senators were present.

**Senator Espegard** : This is to prevent advertising pop ups on the Internet.

**Senator Heitkamp** moved a **DO PASS**. **Senator Espegard** seconded.

**Roll Call Vote:** 7 yes. 0 no. 0 absent.

**Carrier:** Senator Fairfield

Date: 1-26-05  
 Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2165

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Heitkamp Seconded By Espegard

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman	X		Senator Fairfield	X	
Senator Klein, Vice Chairman	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Nething	X				
Senator Espegard	X				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment Fairfield

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
January 27, 2005 8:56 a.m.

Module No: SR-18-1176  
Carrier: Fairfield  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2165: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2165 was placed on the Eleventh order on the calendar.**

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2165



2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2165

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 2-28-05

Tape Number	Side A	Side B	Meter #
1		x	0-20.1
Committee Clerk Signature <i>Jody Renke</i>			

Minutes:

**Chairman Keiser:** Opened the meeting on SB 2165. All committee members were present.

**Marilyn Foss, General Counsel, North Dakota Bankers Association:** Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

**Representative Ruby:** The letters that they are receiving now are they from the actual bank, or national bank that the customer is using?

**Marilyn Foss:** Those letters are not from banks, and how they get the information, is from the county recorder.

**Representative Ekstrom:** I am the individual that received one of these letters, it had the precise amount of my mortgage, the address, my name, my husbands name, and talked about how by calling this number they could reduce the interest rate on the mortgage, it looks official to me

**Tim Karsky, Commissioner, Department of Financial Institutions:** Appeared in support of bill, I would like just to say that when we catch these individuals that there would be some teeth in the law and we could go after them.

**Glen Elliot, private citizen, Mandan, ND:** Appeared in opposition of bill, I believe that this bill is a very narrow approach to a more general problem, it is my belief as a citizen that before I want legislators consider passing new laws, I want those who seek remedies under the existing law to make sure that those have been exhausted. Rather than pass another law here and another law there. One of the things that got me on to this, is the problems that have been sighted with fishing messages, while this bill would give you something to go after them, once you catch them, which will be like trying to grab smoke. I receive a lot of these messages, I have tracked all of these messages, I have never been able to find that they trace back to any Internet protocol address registered in the US with one exception, but that does not mean that the ultimate destination for that information is within the US the receiving server could simply be set up to forward that.

**Representative Dosch:** I move a **DO PASS** on SB 2165.

**Representative Ekstrom:** **SECOND** the **DO PASS** motion.

Motion carried **VOTE: 14-YES 0-NO 0-Absent.**

**Representative Amerman will carry the bill on the floor.**

Hearing adjourned

Date: 2-28-05  
 Roll Call Vote #: 1

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2165**

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do PASS

Motion Made By Rep. Dosch Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Amerman

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
February 28, 2005 11:36 a.m.

**Module No: HR-36-3755**  
**Carrier: Amerman**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2165: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2165 was placed on the Fourteenth order on the calendar.**

2005 TESTIMONY

Sb 2165

TESTIMONY OF MARILYN FOSS IN SUPPORT OF SB 2165

*Same to the House*

Chairman Mutch, members of the IBL committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. This bill was introduced at our request. I'd like to start by describing our problem and then how this bill addresses it.

About a 1 ½ years ago, our member banks started calling us because their mortgage customers were calling them. The customers were receiving mail which appeared to be from the bank. The outside of the envelopes included the bank's name and indicated it was from "the mortgage protection department" or refinancing department. The letter inside also looked like it was from the bank. The letters urged the customer to contact the sender about changing insurance or refinancing their mortgages. The customers who called their banks were 1) confused, 2) angry, or both. They were confused because they didn't understand why the bank was urging them to switch insurers or to refinance their loan, while customers who were angry thought the bank was selling personal information about their loans.

These types of solicitations originate from a variety of sources – in my experience mostly insurance companies, but also, I understand from a legislator who received one of the letters, from nonbank mortgage lenders. The letters are work in the sense that the customers who receive them do think it is their bank that is contacting them and asking them to change a product. The legislator I mentioned was self-described as "usually being pretty smart". Even so, that legislator called the bank and asked why the bank wanted the mortgage to be refinanced. . . .

I have provided you with a sample of the type of letter I've been talking about. The return address states that it is from the "Mortgage Protection Department". The

name of the bank appears after the designation "Lender:" and is visible on the face of the envelope. The bank's name is also referenced in the letter. The customer is directed to respond by using a pre-addressed, postage paid envelope or to respond by fax. The listed address or fax number are most definitely not those of the bank. These types of solicitations also arrive by email. A customer who responds to the solicitation may or may not end up being defrauded. But one thing is certain. The ruse which is used to get past the door of the customer's home is the unauthorized use of a bank's name and/or logo.

SB 2167 applies to the unauthorized use of the name or logo of a bank, savings bank, trust company or savings association. It makes marketing tactics like those I've described, unlawful both for purposes of a civil law suit by the bank to stop the unauthorized use of the bank's name or logo through a court injunction and to recover statutory damages of \$1000 per violation or actual damages whichever is greater, plus attorneys' fees, and by making the conduct a Class B misdemeanor. A Class B misdemeanor is punishable by imprisonment up to 30 days in jail and a \$500 fine if the offender is a person and up to \$10,000 if the offender is an organization.

Other states are also seeing the type of unauthorized use a bank's name or logo that I have described and are enacting laws to address it. In the past couple of years laws similar to SB 2165 have been enacted in Tennessee, Ohio, California and Wisconsin. During the current legislative season, we expect similar bills to be introduced in a number of states, including Minnesota, the home state for the "Mortgage Protection Department". Bankers associations from states that have a law to penalize the unauthorized use of a bank's name or logo are enthusiastic about them because the laws seem to work to stop or substantially reduce this form of misuse of a bank's name.

SB 2167 addresses a real problem for banks and their customers. It does not stop anyone from competing with us for customers; it just stops them from using a bank's name. I urge you to give the bill a "Do Pass" recommendation. Thank you.





# Important Notice Complete and Return

Ref. Loan with:

Record Date: \_\_\_\_\_  
Loan Amount: \_\_\_\_\_  
Doc. Number: \_\_\_\_\_

Lender:

Borrower:

You are invited to participate in our low cost Mortgage Life Insurance Protection Program that can protect your \$49500.00 loan in case of an unexpected tragedy. Without your income, your family would still have to make your monthly mortgage payments.

**FRANCES, your benefits can include:**

**DEATH-** pays off your \$49500.00 loan in the event of your death.

**DISABILITY-** makes your mortgage payment if you become disabled and cannot work.

**MONEY BACK OPTION-** returns all of your premiums if benefits are not used.

**LEVEL PREMIUM-** payments will never increase.

**KNOWING THE TRUTH YOUR FAMILY WILL NOT LOSE THEIR HOME.**

For complete details at no cost or obligation please complete and return this form in the enclosed postage paid envelope.

-OR-

Fax it to (509) 355-7708

P. Sanders, Mortgage Protection Dept. License #OC26106

(Carriers to obtain coverage will vary and are not underwritten or affiliated with the lender)

	Borrower	Spouse/Co-Borrower
Date of Birth	/ /	/ /
Sex	Male <input type="checkbox"/> Female <input type="checkbox"/>	Male <input type="checkbox"/> Female <input type="checkbox"/>
Height	___ ft. ___ in.	___ ft. ___ in.
Weight	___ lbs.	___ lbs.
Smoker	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have you ever had:		
Diabetes?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
High blood pressure?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Heart attack?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Stroke/cancer?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
High Cholesterol?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Occupation:	_____	_____
Work #:	_____	_____
Home #:	_____	_____
Best time to reach you:	_____	Home <input type="checkbox"/> Work <input type="checkbox"/>
First name of person completing this form:	_____	
Email:	_____	